

PS  
fill  
bulkhead

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT ISSUED BY )  
KITSAP COUNTY TO RICHARD O. BLACK )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY GENERAL, )  
Appellants, )  
vs. )  
KITSAP COUNTY and )  
RICHARD O. BLACK, )  
Respondents. )

SHB No. 93

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

THIS MATTER being a request for review of a substantial development permit granted for fill and bulkhead having come on regularly for hearing before the Shorelines Hearings Board on January 9 and 18, 1974, at Port Orchard, Washington; and appellants Department of Ecology and Attorney General appearing through their attorney, Robert V. Jensen, and respondent Kitsap County appearing

1 through its deputy prosecuting attorney, W. Daniel Phillips, and  
2 respondent Richard O. Black appearing pro se; and Board members  
3 present at the hearing being Walt Woodward, Mary Ellen McCaffree,  
4 Robert F. Hintz, Robert E. Beaty and W. A. Gissberg (present for the  
5 first day of the hearing only); and the Board having considered the  
6 sworn testimony, exhibits, records and files herein and arguments of  
7 counsel and having entered on the 6th day of February, 1974, its  
8 proposed Findings of Fact, Conclusions of Law and Order; and the  
9 Board having served said proposed Findings, Conclusions and Order  
10 upon all parties herein by certified mail, return receipt requested  
11 and twenty days having elapsed from said service; and

12 The Board having received exceptions to said proposed Findings,  
13 Conclusions and Order from respondent Black and having considered  
14 and denied same; and the Board being fully advised in the premises;  
15 now therefore,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
17 Findings of Fact, Conclusions of Law and Order, dated the 6th day of  
18 February, 1974, and incorporated by this reference herein and attached  
19 hereto as Exhibit A, are adopted and hereby entered as the Board's  
20 Final Findings of Fact, Conclusions of Law and Order herein.

21

22

23

24

25

26

27

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 19<sup>th</sup> day of April, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward  
4 WALT WOODWARD, Chairman

5 Robert E. Beaty  
6 ROBERT E. BEATY, Member

7 Robert F. Hintz  
8 ROBERT F. HINTZ, Member

9 Mary Ellen McCaffrey  
10 MARY ELLEN MCCAFFREY, Member

11  
12 CERTIFICATION OF MAILING

13 I, Dolories Osland, certify that I mailed copies of the foregoing  
14 document on the 22<sup>nd</sup> day of April, 1974 to each of the following  
15 parties:

16 Mr. Robert V. Jensen  
17 Assistant Attorney General  
18 Department of Ecology  
Olympia, Washington 98504

19 Mr. W. Daniel Phillips  
20 Deputy Prosecuting Attorney  
21 Kitsap County Courthouse  
614 Division Street  
Port Orchard, Washington 98366

22 Mr. Richard O. Black  
23 P. O. Box 194  
Keyport, Washington 98345

24 Board of County Commissioners  
25 Kitsap County Courthouse  
614 Division Street  
Port Orchard, Washington 98366

26  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 Mr. Leighton Pratt  
2 Department of Ecology  
3 St. Martin's College  
4 Olympia, Washington 98504

5 the foregoing being the last known post office addresses of the above-  
6 named parties. I further certify that proper postage had been affixed  
7 to the envelopes deposited in the U. S. mail.

8 Dolores Osland  
9 DOLORIES OSLAND, Clerk  
10 SHORELINES HEARINGS BOARD  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
KITSAP COUNTY TO RICHARD O. BLACK  
  
STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
SLADE GORTON, ATTORNEY GENERAL,  
  
Appellants,  
  
vs.  
  
KITSAP COUNTY and  
RICHARD O. BLACK,  
  
Respondents.

SHB No. 93

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the request for review of a substantial development permit issued by Kitsap County to Richard O. Black, came before the Shorelines Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree, Robert F. Hintz and Robert E. Beaty, the designee for this hearing of the Association of Washington Counties; William A. Gissberg was present for the first day of the hearing only)

EXHIBIT A

1 at a hearing in the City Hall of Port Orchard, Washington on  
2 January 9 and 18, 1974.

3 Appellants were represented by Robert V. Jensen, assistant attorney  
4 general; Kitsap County by W. Daniel Phillips, deputy prosecuting attorney,  
5 and Mr. Black appeared pro se. Richard Reinertsen, Olympia court  
6 reporter, recorded the proceedings.

7 Witnesses were sworn and testified. Exhibits were admitted. Counsel  
8 and Mr. Black made closing arguments.

9 From testimony heard, exhibits examined and arguments considered,  
10 the Shorelines Hearings Board makes these

11 FINDINGS OF FACT

12 I.

13 In 1955, respondent Black purchased Lot 5, Block 2 in the original  
14 Town of Keyport plat. Mr. Black believes that this purchase gave him  
15 title to the second class tidelands fronting his upland property.

16 II.

17 The tidelands fronting Mr. Black's upland property were patented  
18 after statehood. There is no completed sale document in state archives  
19 showing that those tidelands have been sold to another entity.

20 III.

21 When Mr. Black purchased the property there was a vertical face  
22 concrete bulkhead separating his upland property from the tidelands.  
23 The toe of the bulkhead was about at the ten foot tide mark. In  
24 December, 1972, the bulkhead failed and collapsed seaward.

25 IV.

26 To prevent erosion of his upland property, to enhance his view

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 and to create new dry land so that a more pleasing contouring and land-  
2 scaping of his property in relation to his neighbor to the west could be  
3 affected, Mr. Black applied to Kitsap County for a substantial development  
4 permit under the Shoreline Management Act for a bulkhead and fill.

5 V.

6 On May 21, 1973, Kitsap County granted to Mr. Black a substantial  
7 development permit for a landfill and bulkhead to go seaward no more  
8 than 15 feet from the toe of the collapsed bulkhead. On July 16, 1973,  
9 appellants filed with this Board the request for review of that permit  
10 which is the subject of this matter.

11 VI.

12 Liberty Bay, an arm of Puget Sound, is the salt water body on  
13 which Mr. Black's property fronts at Keyport. The Bay is virtually  
14 landlocked and is used by the public for boating, fishing, swimming,  
15 water skiing and other aquatic endeavors. For the full width of  
16 Mr. Black's property, his proposed fill and bulkhead would be a 15 foot  
17 intrusion into the public's rights of navigation.

18 VII.

19 Landward of the bulkhead as proposed by Mr. Black there is a  
20 shelly berm between the 9 and 10 foot tide level. The optimum tide  
21 level mark for successful spawning of surf smelt eggs is between the  
22 9 and 10 foot tide level. Surf smelt eggs have been found on the  
23 shelly berm fronting Mr. Black's upland property. Surf smelt are an  
24 important natural resource of the state; they have some commercial value  
25 and some recreational fishing value but their principal importance is as  
26 forage for salmon and other larger fish. The construction of Mr. Black's

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 proposed fill and bulkhead would destroy the surf smelt spawning area  
2 fronting his upland property and would have a significant adverse impact  
3 on surf smelt.

4 VIII.

5 The projection of a bulkhead and fill as proposed by Mr. Black in  
6 the instant substantial development permit is likely to cause adverse  
7 effects on neighboring beaches causing alterations of the natural  
8 shoreline with a scouring effect.

9 IX.

10 Prevention of erosion of Mr. Black's upland property can be  
11 affected by the construction of a new bulkhead on the line of the  
12 collapsed structure.

13 X.

14 Any Conclusion of Law hereinafter recited which should be deemed  
15 a Finding of Fact is hereby adopted as such.

16 From these Findings, the Shorelines Hearings Board comes to these

17 CONCLUSIONS

18 I.

19 The instant request for review was timely filed and the Shorelines  
20 Hearings Board has jurisdiction of this matter.

21 II.

22 The instant substantial development permit is not consistent with  
23 RCW 90.58.020, particularly as to "protecting against adverse effects  
24 to . . . the waters of the state and their aquatic life, while  
25 protecting generally public right's of navigation and corollary rights  
26 incidental thereto."

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER



1 III.

2 The substantial development permit in this matter is not consistent  
3 with WAC 173-16-060(11) particularly as to (a), (b) and (e).

4 IV.

5 The substantial development permit in this matter is not consistent  
6 with WAC 173-16-060(14), particularly as to (c).

7 V.

8 There apparently is a dispute between the parties in this matter  
9 as to the ownership of the tidelands fronting Mr. Black's upland  
10 property. The Board does not believe it has jurisdiction to adjudicate  
11 this dispute and has considered this matter only within the perimeters  
12 of the Shoreline Management Act of 1971 (RCW 90.58).

13 VI.

14 Any Finding of Fact, which should be deemed a Conclusion of Law  
15 is hereby adopted as such.

16 From these Conclusions, the Shorelines Hearings Board makes this

17 ORDER

18 The request for review is sustained and the instant substantial  
19 development permit is declared null and void. If Mr. Black should  
20 reapply for a substantial development permit to prevent erosion of his  
21 upland property, Kitsap County is directed to grant such a permit on  
22 the line of the collapsed bulkhead.

23  
24  
25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

DONE at Lacey, Washington this 6<sup>th</sup> day of February, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward  
WALT WOODWARD, Chairman

Robert E. Beaty  
ROBERT E. BEATY, Member

Robert F. Hintz  
ROBERT F. HINTZ, Member

Mary Ellen McCaffree  
MARY ELEN MCCAFFREE, Member

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER